



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2005

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-03443

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225757.

The McKinney Police Department (the "department"), which you represent, received a request for the police report related to a specific incident and any additional records related to a particular individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the doctrine of common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, requests for specific reports or for reports relating to a particular incident do not require a governmental body to compile unspecified records and thus do not implicate the privacy concerns expressed in *Reporters Committee*. Additionally, reports that involve the individual solely as a victim, witness, or involved person are not private under the holding in *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor asks for information regarding a specific incident and all other information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, to the extent that the department maintains records, other than the one specifically requested, in which the named individual is identified as a suspect, defendant, or arrestee, we conclude that the department must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.* However, police report number 05-005942 was specifically requested and 05-008229 does not identify the named individual as a suspect, defendant, or arrestee. Therefore these reports may not be withheld on the basis of the holding in *Reporters Committee*. Thus, we must address your remaining arguments for these reports.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (c). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You inform us that police report 05-005942 relates to an active criminal investigation. You assert that the release of the information that relates to this case would interfere with the detection and investigation of crime. Based on your representations, we find that you have established that release of police report 05-005942 would interfere with the detection, investigation, or prosecution of crime and is therefore subject to section 552.108(a)(1). *See*

Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You inform us that police report 05-008229 pertains to a criminal investigation that concluded in a result other conviction or deferred adjudication. This information is therefore subject to section 552.108(a)(2).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108 authorizes the department to withhold the remainder of police reports 05-005942 and 05-008229, it may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, to the extent that the department maintains records, other than the ones specifically requested, in which the named individual is identified as a suspect, defendant, or arrestee, the department must withhold such information under common-law privacy as encompassed by section 552.101 of the Government Code. Other than basic information, the department may withhold police reports 05-005942 and 05-008229 under section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

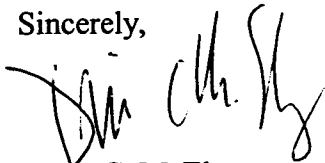
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Dennis C. McElroy
Assistant Attorney General
Open Records Division

DCM/JV/seg

Ref: ID# 225757

Enc. Submitted documents

c: Ms. Jacqi Letendre
Property Manager
Villa View MHC
2201 South Highway 5
McKinney, Texas 75069
(w/o enclosures)